

**Note:** The following revised regulations were approved by the Office of Administrative Law (OAL), and transmitted to the Secretary Of State's Office, on May 25, 2000. These regulations go into effect on June 24, 2000. The version below indicates: (a) language to be added to existing State regulations (using single underlining), (b) language to be removed from existing regulations (~~single-strikeout~~), and (c) language that will remain unchanged. (The double underlining and ~~double-strikeout~~ used to indicate changes made in the December 24, 1999 version have been converted to single ~~strikeout~~/underlining and several minor "typos" have been corrected at OAL's request.)

The final version of the revised regulations will be published by the State on the official California Code of Regulations website. You may reach this site from the Water Laws and Regulations page ("California Code of Regulations" button) of this (SWRCB) website (the same page from which you pulled up or downloaded this document). In the mean time, the following unofficial version is provided for your information.

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## **California Code of Regulations**

### **Title 23. Waters**

#### **Division 3. State Water Resources Control Board**

#### **Chapter 28. Certifications**

#### **Article 1. General Provisions**

#### **§3830. Purpose and Review of Regulations.**

- (a) Various laws provide for the issuance of certifications by the state board or regional boards. These regulations ~~implement the authority of~~ specify how the state board and the ~~Regional B~~boards ~~to implement various issue~~ certifications programs and how the state board acts on petitions for reconsideration of certification actions or failures to act by the executive director, regional boards, and executive officers.
- (b) Within five years from the effective date of these regulations, the state board, in consultation with the Secretary for Environmental Protection, shall review the provisions of this Chapter to determine whether they should be

retained, revised, or repealed.

Authority cited: Sections 1058, ~~13160~~, and ~~13160.1~~, Water Code.

Reference: 26 USC Section 169, 40 CFR Section 20; 15 USC Section 636, 40 CFR Section 21; 33 USC Section 1341; Sections 7, 174, 179, 183, 186, 1059, 13160, 13160.1, 13321, 13350, and 13396, Water Code; Sections 44533 and 44539, Health and Safety Code.

**§3831. Definitions. (~~In Alphabetical Order~~)**

The following words (in alphabetical order) ~~where~~, as used in this ~~sub~~Chapter, shall have the meaning hereafter ascribed to them unless the context of their use clearly requires a different meaning:

- (a) "Activity," when used in reference to water quality certification, means any action, undertaking, or project -- including, but not limited to, construction, operation, maintenance, repair, modification, and restoration -- which may result in any discharge to waters of the United States in California.
- (ab) "Application" means a written request for ~~any~~ certification, including accompanying materials.
- (c) "Applicant" normally means any individual, entity, district, organization, group, or agency submitting an application, subject to the following caveats:
  - (1) When a professional agent or firm submits an application on behalf of a client, the client is the applicant.

- (2) The person or group financially responsible for an activity seeking a federal license or permit which may result in a discharge to waters of the United States is normally the applicant for water quality certification, but
- (3) the federal agency is the applicant when the federal agency requests water quality certification for any discharge which may result from activities to be allowed by that agency under a general license or permit.
- (d) "CEQA" means the California Environmental Quality Act (Public Resources Code Section 21000 et seq.).
- (e) To take a "certification action" means to issue an order, signed by the proper approving official, granting or denying certification within the time period allowed for certification by the federal agency's rules.
- (f) "Complete application" means:

  - (1) for purposes of tax certification, an application made on forms provided by EPA and that includes the appropriate fee required pursuant to Section 3833 of this Chapter;
  - (2) for purposes of water quality certification, an application that includes all information and items and the fee deposit required pursuant to Sections 3833 and 3856 of this Chapter;
  - (3) for purposes of pollution control certification, an application that includes all information, items, and fees required pursuant to

Sections 3833 and 3863 of this Chapter; and

- (4) notwithstanding the specific definitions in Subsections (f)(1) through (f)(3) of this Section, any application for certification for a development project for which the application is deemed complete pursuant to the Permit Streamlining Act (Government Code Section 65920 et seq.).
- (bg) "CFR" means the Code of Federal Regulations.
- (h) "Denial without prejudice" means an inability to grant certification for procedural rather than substantive reasons. This form of denial carries with it no judgement on the technical merits of the activity or compliance of any discharge with water quality standards. A certifying agency may reconsider a revised application package which corrects the procedural problems that caused the original denial without prejudice.
- (ei) "EPA" means the ~~Federal~~ United States Environmental Protection Agency.
- (dj) "Executive director" means the chief administrative officer of the state board or the executive director's designee.
- (ek) "Executive officer" means the chief administrative officer of a regional board.
- (l) "Federal agency" means, for purposes of water quality certification:

  - (1) the federal agency responsible for issuing a license or permit for an activity resulting in a possible discharge for which an application for

certification is submitted, or

(2) a federal agency applying for water quality certification (see definition of "applicant").

(m) "FERC" means the Federal Energy Regulatory Commission.

(fn) "Pollution ~~C~~ontrol ~~C~~ertification" means a certification that a project will further comply~~ance~~ with federal, state or local pollution control standards and requirements and is eligible for financing under the California Pollution Control Financing Authority Act (Health and Safety Code, Division 27, commencing with Section 44502).

(go) "Regional board" means a California Regional Water Quality Control Board.

~~(h) "Small Business Certification" means a certification that additions to or alterations in equipment or facilities, or methods of operation, of small business concerns are necessary and adequate to comply with requirements established under the federal Clean Water Act (33 USC 1151, et seq.).~~

(p) "Standard certification" means a water quality certification subject only to the conditions specified in Section 3860 of this Chapter.

(iq) "State board" means the State Water Resources Control Board.

(jr) "Tax Certification" means a certification that a treatment facility qualifies as a certified pollution control facility within the meaning of Section 169 of the Internal Revenue Code of 1954.

- (s) "USC" means United States Code.
- (t) "Water Code" means the California Water Code.
- (ku) "Water Quality Certification" means a certification that ~~there is~~  
~~reasonable assurance that any discharge or discharges to waters of the~~  
~~United States, resulting from an activity which that requires a federal~~  
~~license or permit, may result in discharge to navigable waters of the United~~  
~~States will not violate~~ comply with water quality standards and other  
appropriate requirements, where the activity requires a federal license or  
permit.
- (v) "Water quality standards and other appropriate requirements" means the  
applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean  
Water Act (33 USC Sections 1311, 1312, 1313, 1316, 1317), and any other  
appropriate requirements of state law.
- (w) "Waters of the United States" means surface water and water bodies as  
defined by EPA regulations (e.g., 40 CFR Section 122.2). All waters of the  
United States in California are also "waters of the state" (defined by the  
Porter-Cologne Water Quality Control Act as "any surface water or ground  
water, including saline waters, within the boundaries of the state." [Water  
Code Section 13050(e)]). Not all waters of the state (e.g., ground water)  
are waters of the United States.

Authority cited: Sections 1058, ~~13160, and 13160.4~~, Water Code.

Reference: 26 USC Section 169, 40 CFR Section 20; 15 USC Section 636,

40 CFR Section 21; 33 USC Section 1341; 40 CFR Section 131.3;  
40 CFR Section 122.2; Sections 7, 1003.5, 1059, 13160, 13160.1, 13050, and 13350,  
Water Code; Sections 44533 and 44539, Health and Safety Code; Section 21000 et  
seq. (CEQA), Public Resources Code; Section 15000 et seq., State CEQA Guidelines.

### **§3832. Number of Copies.**

Two copies of each application shall be submitted.

Authority cited: ~~Sections 1058, 13160, and 13160.4,~~ Water Code.

Reference: 26 USC Section 169, 40 CFR Section 20; 15 USC Section 636, 40 CFR Section 21; 33 USC Section 1341; Section 13160, Water Code; Sections 44533 and 44539, Health and Safety Code.

### **§3833. Fees and Refunds.**

- (a) Each application for a Tax Certification shall be accompanied by a fee of \$200.
- (b) Each application for a Water Quality Certification shall be accompanied by a fee deposit for processing the application. Processing the application includes evaluating the activity proposed in the application and determining whether the certification should be issued and what conditions, if any, should be imposed on the certification.
  - (1) If the activity subject to certification includes, or involves construction or modification of facilities for the purpose of, producing hydroelectric power, and the activity or facilities require the issuance or

amendment of a FERC license, then an initial deposit shall accompany the application, and subsequent deposits shall be required as necessary to cover the state board's reasonable costs of processing the application as follows:

(A) An initial deposit of \$1,000 shall accompany all applications.

(B) If the state board's reasonable costs exceed \$750, the applicant shall provide a second deposit in the amount of the unpaid reasonable costs, if any, plus \$5,000, or a lesser amount estimated by the state board to be necessary to complete processing the application.

The state board may require additional deposits when the state board's reasonable costs exceed the total amount previously deposited less \$2,000. The additional deposits shall be in the amount of the state board's unpaid reasonable costs, if any, plus \$5,000, or a lesser amount that the state board estimates to be necessary to complete processing the application. The state board shall notify the applicant by certified mail of any deposits required under this subsection (b)(1)(B), and the deposit shall be due within sixty (60) days from receipt of the notice.

(C) After the state board acts on the application, or if the applicant withdraws the application, the applicant shall make a final payment so that the total fee paid by the applicant equals the reasonable costs incurred by the state board in processing the application. The state board shall notify the applicant by



certified mail if the applicant owes a final payment on the application fee, and the final payment shall be due within sixty (60) days from receipt of the notice. If the deposit(s) exceed the state board's reasonable costs, the state board shall refund the excess amount to the applicant within sixty (60) days of final action on the application.

(D) For the purposes of this subsection (b)(1), the reasonable costs of processing the application include the state board's reasonable costs incurred in anticipation of the filing of an application, including participation in pre-filing consultation and any investigations or studies to evaluate the impacts of the proposed activity, to the extent that these costs are reasonably necessary to process the subsequently filed application. The state board's reasonable costs include any reasonable costs of processing the application incurred by a regional board at the state board's request. The state board may seek reimbursement of costs pursuant to this subsection (b)(1) only after the applicant has submitted an application to the state board.

(2) ~~equivalent to that required by section 2200 of subchapter 9, chapter 3, title 23, California Code of Regulations, or regulations amendatory thereof (Annual Fee Schedule).~~ If the activity is not subject to Subsection (b)(1) of this Section and may involve a discharge of dredged or fill material, then:

(A) An initial deposit of \$500 shall accompany all applications.

- (B) The total fee, including deposit, for issuing standard certification as defined in Subsection 3831(p) of this Chapter shall be \$500 or, if \$500 does not cover the agency's cost to issue certification, the appropriate one-time amount determined from Section 2200(e), Title 23, of the California Code of Regulations.
- (C) The total fee, including deposit, for taking any other certification action for a discharge of dredged or fill material shall be the appropriate one-time amount determined from Section 2200(e), Title 23, of the California Code of Regulations.
- (3) The licensee/permittee shall provide a fee of \$60 for review and processing of a notice whenever conditional water quality certification of a federal general license or permit requires that a licensee/permittee send a notice to a regional board of intent to proceed with the licensed/permitted activity. No fee shall be required for notice to the state board.
- (4) If a revised application for water quality certification is filed for the same project which had been previously denied certification without prejudice or when an original application is voluntarily withdrawn by the applicant pursuant to Subsections 3835(b), 3836(b), 3836(c), or 3838(c) of this Chapter, the revised application shall be accompanied by any fee or portion thereof that was previously delinquent or outstanding on the original application. Except as provided in this Section, no additional fee shall be required for the revised application if:

- (A) the revised application is filed within twelve (12) months of the denial without prejudice or voluntary application withdrawal,
- (B) the revised application package corrects the procedural problems which caused the original denial without prejudice or voluntary application withdrawal, and
- (C) the project has not changed significantly in scope or potential for adverse impact (i.e., no further technical review is necessary).

- (5) If waste discharge requirements or a waiver of waste discharge requirements are to be issued in conjunction and simultaneously with taking a water quality certification action, the applicant shall pay only a fee, determined from Section 2200, Title 23, of the California Code of Regulations, which reimburses the agency for taking the most costly of the two simultaneous regulatory actions.

If action is taken on a certification application, but waste discharge requirements or a waiver of waste discharge requirements are later issued for the same or revised activity, the applicant shall pay the initial certification fee and any subsequent waste discharge requirements fee.

- (c) For an activity certification for which a specific fee is not set forth in section 2200, or regulations amendatory thereof (Annual Fee Schedule) established in this Section, the fee for handling an application for such certification shall be \$200.00 set at the hourly rate specified in Section

2200.4, Title 23, of the California Code of Regulations. An initial deposit of \$500 shall accompany all such applications.

- (d) ~~If the state does not act on an application for Water Quality Certification, the fee will be refunded.~~

The fees described in this Section do not include the costs of preparation of any CEQA document, should one be required.

- (e) Denial of certification shall not be grounds for refund of any part of a certification application fee.

- (f) If the applicant is a federal agency, the fees described in this Section apply to the extent authorized by federal law.

Authority cited: ~~Sections 1058, 13160, and 13160.1,~~ Water Code.

Reference: 26 USC Section 169, 40 CFR Section 20; 33 USC Section 1341; Sections 1060, 13160, and 13160.1, Water Code.

#### **§3834. Amendments to Applications.**

An amendment to an application prior to a certification action being taken shall be submitted in the same manner as the original application and shall be considered a part of the application it amends. No additional fee shall be required for an amendment to an application prior to a certification action unless the activity's size, design, scope, or potential for adverse impact has changed significantly, prompting the need for further technical or administrative review or otherwise triggering a larger fee as required pursuant to Section 3833 of this Chapter.

Authority cited: Sections 1058, ~~13160, and 13160.1~~, Water Code.

Reference: 26 USC Section 169, 40 CFR Section 20; 15 USC Section 636, 40 CFR Section 21; 33 USC Section 1341; Sections 13160 and 13160.1, Water Code; Sections 44533 and 44539, Health and Safety Code.

**§3835. Complete, Incomplete, and Valid Applications.**

- (a) Upon receipt of an application, it shall be reviewed by the certifying agency to determine if it is complete. ~~(b)~~ If the application is incomplete, the applicant shall be ~~promptly~~ notified in writing no later than 30 days after receipt of the application, of the any additional information or action needed.
- (b) If an application is determined to be incomplete by the certifying agency, an extension of the federal period for certification cannot be obtained, and the federal period for certification will expire before the certifying agency can receive and properly review the missing information, the certifying agency shall deny without prejudice certification for any discharge resulting from the proposed activity unless the applicant in writing withdraws the request for certification.
- (c) When ~~the a complete~~ application is ~~complete~~ received, ~~the application shall be accepted and the applicant, the federal agency, and EPA shall be~~ notified no later than 30 days after receipt of the application.
- (d) A request for certification shall be considered valid if and only if a complete application is received by the certifying agency.

Authority cited: Sections 1058, ~~13160~~, and ~~13160.4~~, Water Code.

Reference: 26 USC Section 169, 40 CFR Section 20; 15 USC Section 636, 40 CFR Section 21; 33 USC Section 1341; Section 13160, Water Code; Sections 44533 and 44539, Health and Safety Code; Section 65943, Government Code.

### **§3836. Additional Information.**

- (a) Once a certifying agency determines that an application is complete, it may request further information from the applicant. Upon request, the applicant shall submit s~~Such additional information must clarify, amplify, correct, or otherwise supplement the contents of a complete application as may be deemed necessary in order for the certifying agency to determine whether a certification should be issued. Supplemental information may include evidence of compliance with appropriate requirements of a water quality control plan.~~
  
- (b) ~~Failure to submit such additional information as may be requested shall be grounds for denial of the application.~~ If an application is determined to be complete by the certifying agency but supplemental information is requested by the certifying agency pursuant to Subsection (a) of this Section, an extension of the federal period for certification cannot be obtained, and the federal period for certification will expire before the certifying agency can receive and properly review the supplemental information, the certifying agency shall deny without prejudice certification for any discharge resulting from the proposed activity unless the applicant in writing withdraws the request for certification.

- (c) If an application is determined to be complete by the certifying agency, but CEQA requires that the certifying agency review a final environmental document before taking a certification action, an extension of the federal period for certification cannot be obtained, and the federal period for certification will expire before the certifying agency can receive and properly review the necessary environmental documentation, the certifying agency shall deny without prejudice certification for any discharge resulting from the proposed activity unless the applicant in writing withdraws the request for certification.

Authority cited: Sections 1058, ~~13160~~, and ~~13160.4~~, Water Code.

Reference: 26 USC Section 169, 40 CFR Section 20; 15 USC Section 636, 40 CFR Section 21; 33 USC Section 1341; 40 CFR Section 121.2; Sections 13160 and 13160.1, Water Code; Sections 44533 and 44539, Health and Safety Code; Sections 21100 and 21100.2, (CEQA) Public Resources Code; Section 15111, State CEQA Guidelines.

### **§3837. Denial of Certification.**

- (a) If certification is denied, the applicant shall be notified in writing of the denial and the reasons ~~therefore~~ for the denial. ~~A copy of such notice shall be sent to~~ Written notification of the denial shall be sent to the applicant, the state board or appropriate regional board(s), the federal agency, EPA, and other interested persons and agencies known to be interested no later than three (3) days after taking the certification (denial) action.
- (b) An application for water quality certification may be denied when:
- (1) the activity requiring a federal license or permit will result in a

discharge which will not comply with applicable water quality standards and other appropriate requirements; or

- (2) compliance with water quality standards and other appropriate requirements is not yet necessarily determined, but the application suffers from some procedural inadequacy (e.g., failure to provide a complete fee or to meet CEQA requirements). In this case denial shall be without prejudice.

Authority cited: Sections 1058, ~~13160~~, and ~~13160.4~~, Water Code.

Reference: 26 USC Section 169, 40 CFR Section 20; 15 USC Section 636, 40 CFR Section 21; 33 USC Section 1341; Section 13160, Water Code; Sections 44533 and 44539, Health and Safety Code.

**§3838. Authority of Executive Director, Executive Officers, and Regional Boards.**

~~Except as otherwise provided herein,~~

- (a) ~~—The Executive Director of the state board, or his/her~~ designee, is authorized to take all actions connected with applications for certification, including execution issuance and denial of certifications.
- (b) An executive officer is authorized to receive applications for water quality certification and to take water quality certification action on activities associated with such applications within the executive officer's region of jurisdiction, except as otherwise provided in Subsection 3855(b) of this Chapter.



- (c) A regional board, at its discretion, may take any action its executive officer is authorized to take under Subsection (b) of this Section. If a regional board directs that a water quality certification action will be taken by that regional board, but an extension of the federal period for certification cannot be obtained, and the federal period for certification will expire before the regional board can take an action, the executive officer shall deny without prejudice certification for any discharge resulting from the proposed activity before the period allowed for certification expires, unless the applicant in writing withdraws the request for certification. Such denial shall be in effect only until the regional board takes an action on the request for certification. The applicant shall not be required to submit a new application or supply an additional fee before the regional board takes an action, unless the project changes significantly in scope or potential for adverse impact and further technical review is necessary.

Authority cited: Sections 1058, ~~13160~~, and ~~13160.4~~, Water Code.

Reference: 26 USC Section 169, 40 CFR Section 20; 15 USC Section 636, 40 CFR Section 21; 33 USC Section 1341; Sections 7, 1059, and 13160, Water Code; Sections 44533 and 44539, Health and Safety Code.

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#### **Article 4. Water Quality Certification**

##### **§3855. Filing of Application.**

- (a) (1) An application for ~~W~~water Q~~u~~ality C~~e~~rtification shall be filed with the regional board executive officer ~~of the regional board~~ in whose

region ~~the~~ a discharge may occur except as provided in Subsection (b) of this Section.

(2) Notice of the application shall be sent by the applicant to the state board executive director whenever the proposed activities may involve a FERC-licensed facility.

(b) (1) An application for water quality certification shall be filed with the state board executive director, and notification of the application provided by the applicant to each regional board executive officer in whose region a discharge may occur, whenever a potential discharge from a proposed activity:

(A) may fall under the jurisdiction of more than one regional board, or

(B) is involved or associated with one or more of the following:

1. an appropriation of water, subject to Part 2 (commencing with Section 1200) of Division 2 of the Water Code;
2. a hydroelectric facility, and the proposed activity requires a FERC license or amendment to a FERC license; or
3. any other diversion of water for domestic, irrigation, power, municipal, industrial, or other beneficial use.

- (2) (A) For an application subject to Subsection (b)(1)(A) of this Section, copies of the application shall be provided by the applicant to the executive officers of those regional board regions that may be affected by a proposed activity. Those executive officers shall transmit to the executive director, before the federal period for certification expires, any appropriate recommendations and conditions necessary to ensure that the proposed activities will comply with water quality standards and other appropriate requirements within their regions.
- (B) For applications subject to Subsection (b)(1)(B) of this Section, the executive director shall forward to the executive officer of the appropriate regional board copies of any portions of the application that may be relevant to adverse water quality impacts, other than specific impacts resulting from alteration/ modification to instream flows, from the proposed activity. The executive officer shall review for water quality concerns the relevant portions of the application and transmit back to the executive director any appropriate recommendations and conditions necessary to ensure that the activity will comply with water quality standards and other appropriate requirements.

Authority cited: Sections 1058, ~~13160~~ and ~~13160.1~~, Water Code.

Reference: 33 USC Section 1341; Sections 1059 and 13160, Water Code.

**§3856. Contents of A Complete Application.**

~~The~~ A complete application shall include all of the following information and items:

- (a) The name, address, and telephone number of:
  - (1) the applicant, and
  - (2) the applicant's agent (if an agent is submitting the application).
- (b) A full, technically accurate description, including the purpose and final goal, of the entire activity involved.
- (c) Complete identification of all federal licenses/permits being sought for or applying to the proposed activity, including the:
  - (1) federal agency;
  - (2) type (e.g., individual license, regional general permit, nationwide permit, etc.);
  - (3) license/permit number(s) (e.g., nationwide permit number), if applicable; and
  - (4) file number(s) assigned by the federal agency(ies), if available.
- ~~(b)~~ (d) — A complete copyies of either:
  - (1) the federal application(s) for whatever federal license(s) or permit(s) is being sought by for the applicant. activity, or,

(2) if no federal applications are required, any notification(s) concerning the proposed activity issued by the federal agency(ies), or,

(3) if no federal notifications are issued, any correspondence between the applicant and the federal agency(ies) describing or discussing the proposed activity.

If no application, notification, correspondence or other document must be exchanged between the applicant and federal agency(ies) prior to the start of the activity, the application shall include a written statement to this effect.

(e) Copies of any final and signed federal, state, and local licenses, permits, and agreements (or copies of the draft documents, if not finalized) that will be required for any construction, operation, maintenance, or other actions associated with the activity. If no final or draft document is available, a list of all remaining agency regulatory approvals being sought shall be included.

If the federal licenses or permits required for the activity include a FERC license or amendment to a FERC license, a complete copy of a draft application for the FERC license or amendment of the FERC license meeting the requirements of Subsection 4.38(c)(4) of Title 18 of the Code of Federal Regulations is required.

(ef) A copy of any ~~draft or~~ final ~~environmental~~ CEQA document(s), if available, prepared for the activity. Although CEQA documentation is not required for a complete application, the certifying agency shall be provided with and have ample time to properly review a final copy of valid CEQA

documentation before taking a certification action.

(g) The correct fee deposit, as identified in Section 3833 of this Chapter.

(h) A complete project description, including:

(1) Name(s) of any receiving water body(ies) that may receive a discharge.

(2) Type(s) of receiving water body(ies) (e.g., at a minimum: river/streambed, lake/reservoir, ocean/estuary/bay, riparian area, or wetland type).

(3) Location of the activity area in latitude and longitude, in township/range, or clearly indicated on a published map of suitable detail, quality, and scale to allow the certifying agency to easily identify the area and water body(ies) receiving any discharge.

(4) For each water body type reported under Subsection (h)(2) of this Section, the total estimated quantity of waters of the United States that may be adversely impacted temporarily or permanently by a discharge or by dredging.

The estimated quantity of waters to be adversely impacted by any discharge shall be reported in acres and (for channels, shorelines, riparian corridors, and other linear habitat) linear feet, except that dredging estimates shall be reported in cubic yards.

(5) The total estimated quantity (in acres and, where appropriate, linear

feet) of waters of the United States, by type (see Subsection (h)(2) of this Section) proposed to be created, restored, enhanced, purchased from a mitigation or conservation bank, set aside for protection, or otherwise identified as compensatory mitigation for any anticipated adverse impacts. If compensatory mitigation is to be provided in some other form, that shall be explained.

- (6) A description of any other steps that have been or will be taken to avoid, minimize, or compensate for loss of or significant adverse impacts to beneficial uses of waters of the state.
- (7) The total size (in acres), length (in feet) where appropriate, type, and description of the entire project area, including areas outside of jurisdictional waters of the United States.
- (8) A brief list/description, including estimated adverse impacts of any projects implemented by the applicant within the last five years or planned for implementation by the applicant within the next five years that are in any way related to the proposed activity or that may impact the same receiving water body(ies) as the proposed activity. For purposes of this item, the water body extends to a named source or stream segment identified in the relevant basin plan.

A complete application for water quality certification need not contain unnecessarily duplicative information. If the copy of a federal application contains information requested in this Section, that specific information need not be provided elsewhere in the application provided that the application clearly indicates where all required information and items are to be found.

Authority cited: Sections 1058, ~~13160 and 13160.1~~, Water Code.

Reference: 33 USC Section 1341; 40 CFR Section 121.2; Sections 13160 and 13160.1, Water Code; Section 21080, Public Resources Code.

**§3857. Regional Board Action-Waste Discharge Requirements.**

~~———— (a) ——— The regional board shall review the application to determine whether the activity will result in a discharge into navigable waters of the United States.~~

~~———— (1) ——— If it is determined that the activity will not result in such a discharge, the regional board shall notify the applicant, the federal licensing or permitting agency (federal agency) and EPA that the state will not act upon the application.~~

~~———— (b) ——— If the activity will result in a discharge into navigable waters of the United States, the regional board shall consider whether waste discharge requirements should be adopted for the activity, whether the adoption of waste discharge requirements should be waived, or whether a certification, with or without conditions, should be issued.~~

~~———— (1) ——— If waste discharge requirements are to be adopted, the regional board shall proceed toward adoption of requirements. If waste discharge requirements are to be waived, the regional board shall waive such requirements, with conditions if appropriate. In either event, the regional board shall notify the applicant, the federal agency and EPA that the state will not act upon the application.~~

~~———— (2) ——— If it is determined that a certification should be issued, the regional~~



~~board shall make a report with recommendations, including recommendations on any conditions deemed necessary, to the executive director.~~

Nothing in this article is intended to limit or prevent the state board or regional boards in any way from issuing or waiving issuance of waste discharge requirements for any activity.

Authority cited: Sections 1058, ~~13160 and 13160.1~~, Water Code.

Reference: 33 USC Section 1341; Sections 13160, 13260, and 13263; Water Code.

**§3858. HearingsPublic Notice and Hearings.**

- (a) The executive director or the executive officer with whom an application for certification is filed shall provide public notice of an application at least twenty-one (21) days before taking certification action on the application, unless the public notice requirement has been adequately satisfied by the applicant or federal agency. If the applicant or federal agency provides public notice, it shall be in a manner and to an extent fully equivalent to that normally provided by the certifying agency. If an emergency requires that certification be issued in less than 21 days, public notice shall be provided as much in advance of issuance as possible, but no later than simultaneously with issuance of certification.
- (b) The state board or a regional board may hold a public hearing with respect to any application for certification.

Authority cited: Sections 1058, ~~13160 and 13160.1~~, Water Code.

Reference: 33 USC Section 1341; Sections 179, 183, 1059, and 13160, Water Code.

**§3859. ~~Action by State Board~~ on an Application.**

- (a) After review of the application, all relevant data, and any recommendations of a regional board, other state and federal agencies, and any interested person, the state board, the executive director, when acting as the state board's designee, or executive officer, as provided in Subsection (c) of this Section, may shall issue the certification or deny certification for any discharge resulting from a pertinent activity before the federal period for certification expires requested. A certification, if issued, shall be eConditioned shall be added to any certification, if necessary, to ~~ensure~~ ensure that ~~the all activities involved does not violate federal or state~~ will comply with applicable water quality standards and other appropriate requirements. Copies of any certification or denial of certification issued shall be sent to the applicant, the state board (if not the certifying agency), appropriate regional board(s) (if not the certifying agency[ies]), EPA, the federal agency, and all other parties known to be interested no later than three (3) days, after taking the certification action. A written certification or denial shall include:
- (1) the name(s) of the receiving water body(ies) and the number(s) of the hydrologic unit(s) that contain(s) the receiving water body(ies), if available;
- (2) the certification action being taken and a complete list of any conditions; and

- (3) a suitable summary of the information provided by the applicant as listed in Subsections 3856(a), (b), (c), and (h) of this Chapter.
- (b) After such review, in lieu of issuance of a certification, if it is clear that the all proposed activity(ies) will not violate Sections 301, 302, 303, 306 and 307 of the Federal Clean Water Act (33 USC 1311, 1312, 1313, 1316 and 1317) comply with water quality standards and other appropriate requirements, the applicant, the federal agency and EPA may be notified that the state will not act upon the application. the state board, executive director, regional board, or executive officer, as provided in Subsection 3859(c) of this Chapter, may issue a standard certification, subject only to the conditions in Section 3860 of this Chapter.
- (c) For applications submitted pursuant to Subsection 3855(a) of this Chapter, the regional board or executive officer shall take a certification action under this Section. For applications submitted pursuant to Subsection 3855(b) of this Chapter, the state board or executive director shall take a certification action under this Section.

Authority cited: Sections 1058, ~~13160 and 13160.1~~, Water Code.

Reference: 33 USC Section 1341; Sections 1059 and 13160, Water Code.

### **§3860. Standard Conditions.**

The following shall be included as conditions of all water quality certification actions:

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant

to Section 13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.

- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection 3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

Authority cited: Section 1058, Water Code.

Reference: 33 USC Section 1341; Sections 1059, 13160, 13160.1, and 13321, Water Code.

#### **§3861. Water Quality Certification for Classes of Activities.**

- (a) A certifying agency may, on its own motion, take a "general" certification action on discharges within its own geographic area of jurisdiction that may result from a class or classes of activities. No application is required for a general certification action issued under this Section.
- (b) A class of activities receiving general certification shall:

  - (1) consist of the same or similar types of activities;

- (2) involve the same or similar types of discharges and possible adverse impacts requiring the same or similar certification conditions or limitations in order to alleviate potential adverse impacts to water quality; and
- (3) be determined by the certifying agency to more appropriately be regulated under a general certification action than under individual certification actions.

(c) General certification:

- (1) shall apply only to activities subject to federal licenses and permits, issued in reliance on such certification, during a fixed term not to exceed five years after the general certification is issued;
- (2) shall require public notification at least 45 days before general certification is issued;
- (3) shall be conditioned to require subsequent notification to the appropriate regional board(s) and to the state board by proponents of projects to which the action applies no less than 21 days before any activity which may result in a discharge is commenced; and to include appropriate monitoring and agency-reporting requirements for all activities subject to federal licenses and permits issued in reliance on such certification;
- (4) may require payment of the notification fee from Subsection 3833(b)(3) of this Chapter by project proponents;

- (5) shall meet all other applicable requirements of this Chapter and CEQA.
- (d) A certifying agency may issue general certification only if the activities to be certified individually or cumulatively will not have any of the following impacts, taking into account the probable effectiveness of any conditions or certification in avoiding or mitigating such impacts:
- (1) Significant adverse impacts on water quality that could feasibly be avoided if individual certification, for proposed activities seeking individual federal licenses or permits, was issued.
- (2) Violation of any water quality objectives adopted or approved under Sections 13170 or 13245 of the Water Code.
- (3) The taking of any candidate, threatened, or endangered species or the violation of the federal Endangered Species Act (16 USC Section 1531 et seq.) or the California Endangered Species Act (Fish and Game Code Section 2050 et seq.).
- (4) Exposure of people or structures to potential substantial adverse effects -- including the risk of loss, injury, or death -- from flooding, landslides, or soil erosion.
- (e) The certifying agency may review and revise or revoke (change) a general certification. Any change to a general certification made by the certifying agency pursuant to this subsection shall not apply to activities subject to a federal license or permit issued before such a change is made.

Authority cited: Section 1058, Water Code.

Reference: 33 USC Section 1341; Sections 1059, 13160, 13160.1, and 13321, Water Code.

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## **Article 6. Petitions to State Board**

### **§3867. Petitions for State Board Reconsideration.**

- (a) The state board may be petitioned by an aggrieved person to reconsider an action or failure to act taken by the executive director, a regional board, or an executive officer under Articles 1 through 5 of this Chapter. The executive director may be designated by the state board to reconsider such an action or failure to act by an executive officer or regional board.
- (b)
  - (1) The state board and the executive director, when acting as the state board's designee, may undertake such reconsideration on their own motion. They shall notify the applicant (if any), the federal agency, and all interested persons known to the state board or executive director and give those notified the opportunity to submit information and comments before taking a final reconsideration action (as listed in Subsection 3869(a) of this Chapter).
  - (2) If such reconsideration is initiated more than thirty (30) days after the certification action in question, any rescission or amendment of the certification action resulting from such reconsideration shall not apply to any activities subject to a federal license or permit that:

(A) was issued in reliance on that certification action, and

(B) was issued before the federal agency was notified that such reconsideration had been initiated.

(3) Nothing in Subsection (b) of this Section is intended to limit the authority of a federal agency to issue a new or amended license or permit that incorporates any changes ordered by the state board or executive director following reconsideration of a certification action.

~~(c) — An applicant may petition the state board for reconsideration of any discretionary action or decision of the executive director in denying an application. The A petition for reconsideration shall be filed submitted in writing to and received by the state board within 30 days after the applicant is notified or has knowledge of the of any action or failure to act taken by the executive director, a regional board, or an executive officer under Articles 1 through 5 of this Chapter or decision of the executive director. Where notice of the action or decision is in writing and mailed to the applicant, the 30-day period shall commence three days after mailing.~~

~~(d) — The A petition shall contain the following:~~

(1) the name, address, and telephone number of the petitioner;

~~(42) — Tthe specific action or decision of the executive director failure to act which the state board is requested to reconsider review and a copy of any document issuing or denying certification that is referred to in the petition;:-~~



- (23) ~~—The date on which the certification action or failure to act occurred;  
when the applicant was notified of the action or decision, or the date  
when the applicant first received knowledge of such action or  
decision.~~
- (34) a full and complete statement of The reasons why the action or  
decision failure to act was inappropriate or improper;
- (5) the manner in which the petitioner is aggrieved;
- (46) ~~—The specific action by the state board which applicant the petitioner  
requests;~~
- (7) a list of persons, if any, other than the petitioner and applicant, if not  
the petitioner, known to have an interest in the subject matter of the  
petition;
- (8) a statement that the petition has been sent to the appropriate  
regional board or executive officer and to the applicant, if not the  
petitioner; and
- (9) a copy of a request to the executive director or appropriate executive  
officer for preparation of the state board or regional board staff  
record, if applicable and available, which will include a tape  
recording or transcript of any pertinent regional board or staff  
hearing.
- (10) A summary of the manner in which and to what extent the petitioner

participated in any process (e.g., public hearing testimony, discussion with agency personnel, correspondence), if available, leading to the action or failure to act in question. If a process for participation was available, but the applicant did not participate, the petition shall include an explanation for the petitioner's failure to participate.

Authority cited: Sections 1058, ~~13160~~, and ~~13160.4~~, Water Code.

Reference: 26 USC Section 169, 40 CFR Section 20; 15 USC Section 636, 40 CFR Section 21; 33 USC Section 1341; Sections 7, 183, 186, 1059, and 13160, Water Code; Sections 44533 and 44539, Health and Safety Code.

### **§3867.1 Response to Complete Petitions.**

After receipt of a petition that complies with Section 3867 of this Chapter, the state board or executive director, if acting as the state board's designee, shall give written notification to the petitioner, applicant (if not the petitioner), appropriate executive officer(s), appropriate regional board(s), and other interested persons that they shall have 20 days from the date of mailing such notification to file a response to the petition with the state board. Respondents to petitions shall also send copies of their responses to the petitioner, the applicant (if not the petitioner), and the appropriate executive officer(s). The executive director or executive officer shall file the record specified in Subsection 3867(d)(9) of this Chapter with the state board within this 20-day period. The time for filing a response may be extended by the state board or executive director, if acting as the state board's designee.

Authority cited: Section 1058, Water Code.

Reference: 26 USC Section 169, 40 CFR Section 20; 15 USC Section 636, 40 CFR Section 21; 33 USC Section 1341; Sections 7, 183, 186, 1059, and 13160, Water Code; Sections 44533 and 44539, Health and Safety Code.

#### **§3868. Defective Petitions.**

~~Upon~~ After receipt of a petition ~~which that~~ does not comply with Section ~~43867~~ of this Chapter, the ~~applicant~~ petitioner will be notified in what respect the petition is defective and the time within which an amended petition may be filed. If a properly amended petition is not received by the state board within the time allowed, the petition shall be dismissed, unless good cause is shown for an extension of time.

Authority cited: Sections ~~1058, 13160, and 13160.4~~, Water Code.

Reference: 26 USC Section 169, 40 CFR Section 20; 15 USC Section 636, 40 CFR Section 21; 33 USC Section 1341; Sections 7, 183, 186, 1059, and 13160, Water Code; Sections 44533 and 44539, Health and Safety Code.

#### **§3869. Reconsideration Action by State Board on a Petition.**

(a) ~~— Action by the state board on the petition may be taken after such examination of the petition and the files of the state board as the state board determines is necessary. A hearing, by one or more state board members, may be held in the discretion of the board. Following examination of the petition and any necessary portion of the record, the state board or executive director, when acting as the state board's designee, may:~~

(1) refuse to reconsider the action or failure to act of the executive

director (state board only), regional board, or executive officer if the petition fails to raise substantial issues that are appropriate for reconsideration;

(2) deny the petition upon a finding that the original action or failure to act was appropriate and proper;

(3) set aside or modify, if possible, the previous action or take new appropriate action; or

(4) direct the executive director (state board only), executive officer, or regional board to take appropriate action.

~~(b) — The hearing may be held for the purpose of oral argument, or receipt of evidence, or both. A request for hearing by the applicant shall include a general statement of the nature of the evidence to be presented and the facts to be proved if a hearing is held. The state board or executive director, if acting as the state board's designee, may augment the record by:~~

~~(1) requesting additional written material; or~~

~~(2) holding a public hearing, pursuant to the State Board's hearing regulations (Title 23, California Code of Regulations, Sections 648-648.8).~~

Whenever additional written material is to be added to the record, the state board or executive director, if acting as the state board's designee, shall provide written notification to all interested persons concerning the nature and kind of the additional written material, that the additional material may

be viewed and copied at the offices of the state board, and that they shall have 30 days from the date of mailing such notification to file written comments concerning the additional information with the state board.

~~—— (c) If a hearing is held, the state board shall give reasonable notice to the applicant of the time and place of the hearing and of the issues to be considered.~~

~~—— (d) The hearing shall be conducted in a manner deemed most suitable for securing all relevant evidence without unnecessary delay.~~

(c) The state board or executive director, when acting as the state board's designee, may hold action on a petition in abeyance if agreed upon in writing by the petitioner and the applicant (if not the petitioner).

(d) An aggrieved person may petition the state board or executive director, when acting as the state board's designee, for a stay of the effect of an action under this Chapter by a regional board, executive officer, or the executive director (state board only). Petitions for a stay are subject to the following requirements:

(1) A stay shall be granted only if the petitioner alleges facts and produces proof of:

(A) substantial harm to the petitioner or to the public interest if the stay is not granted;

(B) lack of substantial harm to other interested persons and the public interest if a stay is granted, or the harm which would

result from the stay being granted substantially outweighed by the harm which would occur if no stay is granted; and

(C) substantial questions of fact or law regarding the disputed action.

(2) A petition for a stay shall be supported by an affidavit from a person or persons having knowledge of the facts alleged. Upon a documented showing by the petitioner that it complies with the prerequisites for a stay, the state board or the executive director (when not the originator of the action in question) may hold a hearing. A request for a stay may be issued or denied without a hearing. If a hearing is held, notice shall be given in such manner and to such persons, in addition to the petitioner, as the board or executive director (when not the originator of the action in question) deems appropriate.

(3) Nothing in Subsection 3869(d)(1) of this Chapter shall preclude the state board or executive director, when acting as the state board's designee, from issuing a stay of the effect of an action under this Chapter by a regional board, an executive officer, or the executive director (state board only), upon their own motion. The requirement for an affidavit may be waived by the state board or the executive director (when not the originator of the action in question).

Authority cited: Sections ~~1058, 13160, and 13160.4~~, Water Code.

Reference: 26 USC Section 169, 40 CFR Section 20; 15 USC Section 636, 40 CFR Section 21; 33 USC Section 1341; Sections 7, 183, 186, and 1059, Water Code;

Sections 44533 and 44539, Health and Safety Code.